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18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 VOICE INTERNATIONAL, INC., a
21 California corporation; DAVID
22 GROBER, an individual,

23 Plaintiffs,

24 vs.

25 OPPENHEIMER CINE RENTAL,
26 LLC, et al.

27 Defendants.

Case No. 2:15-cv-08830-JAK-KS

The Honorable John A. Kronstadt,
Courtroom 750

JOINT STATUS REPORT
REQUIRED BY COURT ORDER
DKT. 449

Complaint Filed: November 12, 2015

1 In an Order [Dkt. 449] dated February 4, 2020, the Court directed the parties
2 to meet and confer and file a joint report by 3:00pm on Thursday, February 6, 2020,
3 in advance of the February 10, 2020 status conference that states (i) the parties'
4 respective and/or collective views regarding the scope of trial in light of the recent
5 orders; (ii) proposed dates for trial in the next four weeks, in view of the orders and
6 Voice's obligation to obtain counsel promptly; and (iii) any open issues that should
7 be addressed prior to trial.

8 **I. STATUS CONFERENCE ON MONDAY FEBRUARY 10, 2020**

9 In an Order [Dkt. 456] dated January 31, 2020, the Court continued a Status
10 Conference from February 3, 2020 to February 10, 2020 at 1:30 pm.

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12 **A. Defendants' Statement**

13 Mark Young, counsel for Defendant Oceanic Production Equipment and
14 Defendant Jordan Klein Sr., will appear telephonically for the status conference, as
15 approved by the Court's Order [Dkt. 455] dated January 31, 2020.

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17 **B. Plaintiff's Statement.** David Grober will appear in person at the Status
18 conference.

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20 **II. SETTLEMENT**

21 Efforts to settle the case have through counsel have failed. However, John
22 Dann and David Grober took it upon themselves and commenced multiple
23 conversations on February 5th and through the morning of February 6th, and
24 further involved Jordan Klein Sr. to see if they could fashion a settlement. They
25 have an agreement in principle. David Grober has left a message for Marty
26 Oppenheimer late morning of February 6th, to engage him in a discussion for a
27 global settlement. As of the writing of this, approximately 2:30 pm, Thursday
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1 February 6th Mr. Grober has not heard back from Marty Oppenheimer, and looks
2 forward to having that conversation, and believes that continued direct
3 participation between the litigants themselves is most likely to produce results.
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5 **III. TRIAL DATE**

6 The Court's Order [Dkt. 449] directed the parties to propose dates for trial in
7 the next four weeks.
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9 **A. Defendants' Statement**

10 In accordance with the Court's Order [Dkt. 449], Defendants propose a trial
11 date of February 18, 2020, February 25, 2020 or March 3, 2020.

12 Defendants remain agreeable to having Judge Gail J. Standish or Judge
13 Karen L. Stevenson preside over all additional proceedings in this matter.
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15 **B. Plaintiff's Statement**

16 With the Court's determination of the Motions in Limine, multiple issues
17 were resolved that have allowed the litigants to discuss meaningful settlement.
18 Plaintiffs wish time to continue to the process to hopefully meet fruition. If it does
19 not with Marty Oppenheimer, but having an agreement in principal with the OPEL
20 and Klein Sr., Plaintiff Grober would likely request a mediation with the
21 Magistrate to see if resolution can be achieved.
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23 **IV. SCOPE AND DURATION OF TRIAL**

24 Plaintiff's *ex parte* application [Dkt. 446, p. 3 of 8, line 11] refers to a five-
25 day trial. This conflicts with Defendants' understanding that the trial, as
26 previously set, would have lasted 4 days, and that each side would be limited to a
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1 total of 15 hours for opening statements, direct and cross examinations of
2 witnesses, and closing arguments. [Dkt. 382, p. 5].

3 4 **A. Defendants' Statement**

5 Defendants respectfully request that the Court reconsider the trial duration
6 and hourly limits, in view of the simplification of issues for trial. The Court has
7 now excluded evidence on the doctrine of equivalents [Dkt. 401, p. 1], and
8 damages [Dkt. 459], and documents produced untimely after discovery [Dkt. 459].
9 Defendants respectfully request that the Court shorten the trial to a maximum of
10 two days, and limit each side to a maximum of five (5) hours for opening
11 statements, examinations of witnesses, and closing arguments. Defendants believe
12 5 hours is ample time for each side to address the remaining issues of direct literal
13 infringement, inducement, invalidity, alter ego and willfulness.

14 15 **B. Plaintiff's Statement**

16 If there is no settlement reached, Plaintiff Grober, as noted in the recent Ex
17 Parte, Dkt. 446, Plaintiffs would opt for a trial on infringement first.

18 19 **V. TRIAL COUNSEL**

20 Counsel for Defendants have not changed. Plaintiff David Grober will
21 appear *pro se*, as he has done throughout this case. As of the date of this report,
22 Plaintiff Voice International still has no legal representation for this lawsuit.

23 24 **A. Defendants' Statement**

25 On December 9, 2019, Attorneys Robert Lauson and Lamar Treadwell filed
26 an "Ex Parte Application to Withdraw as Plaintiff Voice International's Attorneys
27 of Record." [Dkt. 431]. Each filed a declaration in support of the application to
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1 withdraw. [Dkt. 431 at 4-5 (“Lauson Declaration”), Dkt. 443 (“Treadwell
2 Declaration”)]. On January 2, 2020, the Court granted the application. [Dkt. 445].
3 The Lauson Declaration makes clear that for months prior to December 2019, Mr.
4 Grober knew of Mr. Lauson’s retirement, move to Florida, sale of his law practice
5 and inability to continue representing Plaintiff Voice International. [Lauson
6 Declaration para. 3] Concomitantly, Mr. Grober knew that Lamar Treadwell,
7 appearing *pro hac vice*, could not continue his representation without local counsel
8 and support staff. [Treadwell Declaration para. 3]. Indeed, on October 2, 2019,
9 Lauson filed a notice of unavailability after December 15, 2019. [Dkt. 384].

10 Plaintiffs have known about the withdrawal of Voice International’s
11 attorneys since at least October 2, 2019, when Lauson filed a notice of
12 unavailability and informed Grober of his retirement plans. [Lauson Declaration
13 para. 3] In the January 2nd Order, the Court directed Voice International to retain
14 new counsel posthaste:

15 Voice International must move expeditiously to identify and
16 engage new counsel. If new counsel is promptly identified but
17 conditions engagement on a reasonable continuance of the trial date to
18 allow time to review the extensive record in this action and to prepare
19 for trial, such relief may be granted based on a review of an
20 application that sets forth the specific bases for the request. If Voice
21 International fails timely to identify and conditionally engage other
22 counsel, that could lead to the dismissal of its claims, without
23 prejudice to the claims brought by Grober, to the extent that they are
24 viable as claims separate from those advanced by Voice International.
25 Dkt. 445, p. 2 of 2.

26 More than a month has passed since the Court’s January 2nd Order. More
27 than four months have passed since Lauson filed a notice of unavailability. Voice
28 International has already had more than adequate time to retain new counsel.
Voice International’s claims should be dismissed with prejudice, leaving for trial
only those claims of Plaintiff Grober that are viable as claims separate from those
advanced by Voice International.

B. Plaintiff's Statement

As noted in Dkt. 446, Robert Lauson had stated to the Court on November 18, 2019, and having known for a half year at least that he was retiring to Florida in December, and having bought a house, would none-the-less be available for trial in 2020, and would fly in from Florida to do that. It was only in December, on a day's notice to Mr. Lauson, from the firm he sold his company to, that we could not participate and thereupon filed his motion to withdraw, approved by the Court on January 2, 2020. Mr. Grober has been active in meeting with potential counsel, as well as undertaking the significant task of dealing and cataloging the case records and exhibits, as well as attending to the ex parte reexam that Mr. Klein filed and is due shortly.

VI. JURY INSTRUCTIONS AND VERDICT FORM

The parties have filed proposed and disputed jury instructions [349, 350, 407, 408]. The parties have also filed a proposed jury verdict form. [Dkt. 347].

A. Defendants' Statement

In view of the Court's recent rulings, Defendants revised the last set of jury instructions and the verdict form. Defendants' revisions incorporate the recent claim constructions and eliminate entries on damages and doctrine of equivalents. Defendants provided the revised jury instructions and verdict form to Plaintiff Grober on February 5, 2020.

B. Plaintiff's Statement

Plaintiff Grober, on short notice of this report, settlement talks and the issues

1 noted above, has not reviewed the jury instructions as to be able to comment.

3 **VII. EXHIBIT LIST**

4 The parties filed joint exhibit lists on September 16, 2019 [Dkt. 348], and on
5 October 15, 2019 [Dkt. 397], and on November 7, 2019 [Dkt. 409].

6 By Order [Dkt. 416, p. 1] dated November 18, 2019, the Court directed the
7 parties to file a notice of disputed exhibits in which they are grouped by common
8 objections no later than December 16, 2019. The court instructed the parties to file
9 a stipulation and proposed order no later than December 13, 2019 if additional time
10 is necessary.

11 On December 13, 2019, counsel for Plaintiff Voice International requested
12 Defendants' consent to an extension of time until December 19, 2019, to file a
13 notice of disputed exhibits in which they are grouped by common objections.
14 Defendants consented. Counsel for Plaintiff Voice International timely filed a
15 stipulated request for extension [Dkt. 437] on December 13, 2109.

16 After Defendants provided to Plaintiffs their revised notice of disputed
17 exhibits grouped by common objections, Defendants did not hear back from
18 Plaintiffs. Rather than risk missing a deadline, Defendants filed a Joint Exhibit
19 List [Dkt. 440, title of filing corrected as Dkt. 441] without Plaintiffs' signatures or
20 approval. That Exhibit List [Dkt. 441] contains a list of exhibits and table of
21 objections exactly as provided by Plaintiffs to Defendants on December 17, 2019.
22 Defendants edited some of Defendants' objections, but did not add any exhibits.
23 Defendants did not change any of Plaintiffs' entries in the exhibit list or table of
24 objections.

24 **A. Defendants' Statement**

25 The Exhibit List [Dkt. 441] filed on December 19, 2019, is the latest version
26 of the exhibit list. While the exhibit list may include exhibits that Plaintiffs
27 intended to offer in support of damages and doctrine of equivalent claims, and
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1 exhibits that were not timely produced during discovery, Defendants do not believe
2 further revisions of the exhibit list are necessary before trial. Defendants will be
3 prepared to make appropriate evidentiary objections, if necessary, during trial.
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5 **B. Plaintiff's Statement.**

6 Plaintiff Grober, on short notice of this report, settlement talks and the issues
7 noted above, has not reviewed the exhibit list and is unable to comment.
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9 **VIII. MOTION FOR LEAVE TO AMEND**

10 On December 19, 2019, Plaintiffs filed a one-page motion for leave to file an
11 amended Exhibit List [Dkt. 438]. Plaintiffs did not schedule a hearing on the
12 motion. Defendants' opposed the motion [Dkt. 450].

13 **A. Defendants' Statement**

14 Defendants' opposed the motion [Dkt. 450] for failure to show good cause
15 and for untimely introduction of exhibits that were omitted from prior joint exhibit
16 lists filed on September 16, 2019 [Dkt. 348], and on October 15, 2019 [Dkt. 397],
17 and on November 7, 2019 [Dkt. 409].
18

19 **B. Plaintiff's Statement**

20 Plaintiff Grober, on short notice of this report, settlement talks and the issues
21 noted above, has not reviewed this issue.
22

23 **IX. REEXAMINATION**

24 On July 23, 2019, Klein Sr. filed a Request for Ex Parte Reexamination No.
25 90014342, which challenged the validity of every asserted claim of the '662 patent,
26 i.e., claims 1, 3, 4, 14, 32, 35 and 38. On September 10, 2019, the US Patent and
27 Trademark Office granted the Request for Reexamination against every asserted
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1 claim. [Dkt. 379-1 pp. 81-109]. On December 16, 2019, in a 135-page Office
2 Action, the US Patent and Trademark Office rejected every asserted claim of the
3 '662 patent. A copy of the office action is attached hereto as Exhibit 1.

4 **A. Defendants' Statement**

5 **Every asserted claim of the '662 patent is currently rejected by the**
6 **USPTO.** Each claim is very clearly anticipated by the new prior art. The asserted
7 claims will not survive the reexamination. A trial is unnecessary.

8 On August 16, 2019, counsel for the parties met as required under LR 16-
9 2. As required by LR 16-2.9, Mark Young, counsel for Defendants OPEL and
10 Klein Sr. broached settlement. In addressing settlement, Mr. Young referred to
11 prior art that was delivered during discovery and forms the basis for the Ex
12 Parte Reexamination Proceeding that is currently pending at the USPTO. Mr.
13 Young asked Messrs. Grober and Lauson if they had considered the prior art.
14 While Mr. Grober claimed that he had reviewed the prior art and determined
15 that it did not anticipate the asserted claims, he could not identify a single claim
16 element that is not described in the prior art. Mr. Lauson, counsel for Voice
17 International, vacillated, first saying that he had not reviewed the prior art, then
18 saying that he "looked at it" but was not prepared to discuss it. To this day,
19 Plaintiffs have never identified a single claim element that is recited in the
20 asserted claims but not described in the prior art, because no such element
21 exists. Plaintiffs have not responded to the outstanding office action.
22 [Exhibit1].

23 A stay pending final disposition of the reexamination would avoid an
24 unnecessary trial. Additionally, because (a) the accused MakoHeads are not in use
25 and will remain so at least until the '662 patent expires on May 26, 2020, and (b)
26 damages have been excluded, a stay could not conceivably prejudice Plaintiffs.

1 Accordingly, Defendants support a stay pending the outcome of the
2 reexamination proceeding.

3
4 **B. Plaintiff's Statement**

5 Plaintiff Grober, as noted above, has also had to undertake Mr. Klein's ex
6 parte USPTO reexam, further removing time from attending to trial issues and
7 locating counsel.

8
9 Plaintiff Grober's statement overall. This report was written by Mr. Grober
10 using the initial report sent to Mr. Grober by Mr. Young, and whom was notified
11 of the settlement discussions and that Mr. Grober's response may come late due to
12 the lengthy settlement talks. Mr. Grober just noticed that Mr. Young has filed.

13 Hopefully the issues of settlement can be fruitful. With an agreement in
14 principal with OPEL and Mr. Klein, and having reached out to Marty
15 Oppenheimer, maybe a great use of the meeting on Monday February 10, would be
16 to try and settle any remaining issues, even set a meeting with the Magistrate if
17 there are remaining issues.

18 Mr. Grober apologizes to the Court for this report being slightly over the
19 deadline, but hopes the sincere attempts on the part of Grober, Dann and Klein are
20 seen as worthwhile.

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22 Dated: February 6, 2020

Respectfully submitted,

23
24 By: DAVID GROBER

25 s/David Grober
26 Plaintiff, Pro Se
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